



Office for Democratic Institutions and Human Rights

REPUBLIC OF MALTA

EARLY PARLIAMENTARY ELECTIONS

3 June 2017

OSCE/ODIHR Election Assessment Mission Final Report



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I. EXECUTIVE SUMMARY

Following an invitation from the Permanent Mission of Malta to the OSCE and based on the recommendation of a Needs Assessment Mission, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Assessment Mission (EAM) for the 3 June 2017 early parliamentary elections.

The elections were held in a professional and efficient manner with electoral stakeholders expressing confidence in most stages of the process. The campaign was competitive, but was dominated by the two leading political parties. It took place against the backdrop of public protests and calls by the opposition for the prime minister's resignation over allegations of corruption and misconduct concerning several senior political figures and their family members.

The electoral legal framework, primarily comprising the Constitution and the General Elections Act, provides a sound basis for holding democratic elections. Since the 2013 parliamentary elections, the legislation was amended twice to further detail voting procedures in retirement homes and hospitals and to regulate party and campaign finance. Several past OSCE/ODIHR recommendations remain unaddressed, including provisions for citizen and international election observation.

Malta uses the single transferable vote, which, generally enhances representativeness but is credited by many stakeholders with delivering consistently bipartisan legislatures. District level quotas act as *de facto* thresholds that some small parties and independent candidates described as an excessive barrier to obtaining representation.

The elections were managed by two levels of administration, comprised of the Electoral Commission (EC) and 645 polling stations staffed by Assistant Election Commissioners. EC meetings were closed and decisions were mostly communicated only to those whom they concerned, thus negatively affecting transparency. Although the EC enjoys public confidence, the appointment method and absence of representatives of non-parliamentary parties or other stakeholders give rise to some concerns about its impartiality.

Citizens over the age of 18 years are eligible to vote, unless they are declared incompetent by a court or are serving a prison sentence of more than one year. The right to vote is also withheld from anyone declared legally incapacitated. Voter registration is passive, and the voter register is updated at regular intervals. The process is inclusive and enjoys stakeholder confidence despite some concerns about the utility and potential for misuse of voting cards issued for each election.

Eligible voters can stand for elections in no more than two constituencies. The law establishes several restrictions that largely aim at preventing conflict of interest but in some cases challenge international standards and existing European Court of Human Rights jurisprudence. The candidate registration process was inclusive overall, with the EC registering 352 candidatures of 211 candidates nominated by five political parties and including two independent candidates.

There are no temporary special measures to promote women candidates. Of the 211 candidates only 42 were women, and only 10 were elected in these elections. Given the limited presence of women in the political process, most political parties support the introduction of special measures to increase the number of women elected to parliament. Furthermore, there are no women on the EC.

The campaign was vivid, but characterised by a confrontation between the two parliamentary parties to the detriment of substantive debate. Small parties and the independent candidates enjoyed little visibility apart from on social media. Pervasive allegations of corruption, together with strikingly negative rhetoric, led many OSCE/ODIHR EAM interlocutors to describe the campaign as exceedingly aggressive. Adverts displaying government achievements raised concerns about the appropriateness of using state funds for what many perceived as campaigning.

Campaign silence provisions were observed in traditional media, but paid advertising and campaigning by political parties continued on social media. Candidates from the two leading parties sent text messages to voters on the eve of and on election day, and party representatives campaigned and recorded voter information outside of established polling station perimeters. Some OSCE/ODIHR EAM interlocutors described these practices as intrusive.

The 2015 Financing of Political Parties Act introduced a system of political party and campaign finance regulations that incorporated many previous OSCE/ODIHR and the Group of States against Corruption (GRECO) recommendations. Despite improved provisions to enhance transparency and new sanctioning procedures, several concerns remain, such as the absence of requirements to use a designated bank account or to disclose donations to entities owned by political parties, as well as excessive disclosure thresholds, and a lack of detail regarding as well as timing of reporting.

The media environment is pluralistic and voters could access a broad range of views. However, the ownership of a large part of the media by the two parliamentary parties had a restrictive effect on genuine debate. It distorted editorial independence and contributed to partisan and recriminatory campaign coverage. These factors skewed the level playing field for contestants, which was neither re-balanced by the public broadcaster nor enforced by the media regulator. While freedom of expression was respected, defamation and insult remain criminalized and the courts were used to stifle critical coverage.

The legal framework provides for redress of electoral complaints and appeals through the EC and the courts and the electoral dispute resolution system enjoyed confidence among most OSCE/ODIHR EAM interlocutors. However, the law does not always specify deadlines for resolving complaints, which could potentially undermine timely remedy and the EC does not publish decisions on complaints or provide information on their number or type.

According to the OSCE/ODIHR's election observation methodology, the EAM did not undertake comprehensive and systematic observation of election day proceedings. However, mission members visited a limited number of polling stations during early voting and on election day. Voting was orderly and appeared to be well organized. All polling stations visited provided access for voters with disabilities, although the system of assisted voting compromised vote secrecy. Counting took place in a national counting centre and was conducted efficiently and transparently. Only national and district level results were published, thus negatively affecting transparency overall.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the Permanent Mission of Malta to the OSCE to observe the 3 June 2017 early parliamentary elections and based on the recommendation of a Needs Assessment Mission conducted from 15 to 17 May, the OSCE/ODIHR deployed an Election Assessment Mission (EAM) from 26 May to 11 June.¹ The OSCE/ODIHR EAM was led by Ambassador Jorge Fuentes and consisted of six experts from five OSCE participating States. The EAM was based in Valletta and visited several locations across the country.

The electoral process was assessed for compliance with OSCE commitments, other international obligations and standards for democratic elections, and with national legislation. In line with the OSCE/ODIHR's methodology, the EAM did not observe election day proceedings in a systematic or comprehensive manner, but visited a limited number of polling stations and the national counting centre.

The OSCE/ODIHR EAM wishes to thank the Ministry of Foreign Affairs (MFA) and the Electoral Commission (EC) for their co-operation and assistance, as well as to express gratitude to the authorities and representatives of state institutions, leaders of political parties, candidates, media, civil society, the diplomatic community and other interlocutors for sharing their views.

III. BACKGROUND AND POLITICAL CONTEXT

Malta is a parliamentary republic with legislative power vested in a single chamber, the House of Representatives. Executive power is exercised by the government led by the prime minister. The president is elected by parliament and holds limited functions.

The political party system in Malta has been dominated by two formations since the country's independence in 1964. The traditionally centre-left Labour Party (PL) and the centre-right Nationalist Party (PN) have alternated and spent a comparable length of time in government. No other political party has succeeded in obtaining seats in parliament in an election and bipartisanship is evident in many aspects of the state and its institutional design.² The last parliamentary elections were held in March 2013 when the PL defeated the PN after its three consecutive legislative periods in power.³

Parliamentary elections were originally expected to take place in 2018, but the Prime Minister called for an early vote during his party's annual May Day rally. The President subsequently endorsed the date of 3 June. The campaign was conducted against the backdrop of public protests and a magisterial inquiry prompted by allegations of corruption and misconduct by several senior political figures waged by the opposition and media in the wake of the publication of the 'Panama Papers' in mid-2016. The elections also took place at the end of Malta's first presidency of the Council of the

¹ See previous [OSCE/ODIHR election reports on Malta](#).

² Many institutions are composed of an equal number of members from the two parliamentary parties, with the chairperson nominated by the government, e.g. the Electoral Commission, Broadcasting Authority, Public Service Commission and the Employment Commission.

³ The elections resulted in the PL winning 39 seats and PN 30 seats. After a legal challenge, in November 2016, the Constitutional Court awarded two extra seats to the PN after it established errors in the counting process. Since the elections, one member withdrew from the PL and formed the Democratic Party (PD).

European Union and in the context of domestic and international media focus on the country's corporate tax system in light of the so-called 'Malta Files' revelations.⁴

Citing the electoral system and the dominant position of the two parties with parliamentary representation in state institutions and the media, most OSCE/ODIHR EAM interlocutors did not expect a third political alternative (contesting the elections independently) to obtain seats in parliament.⁵ Constitutional reform continued to be debated domestically, with several stakeholders raising concerns about a bipartisan system of appointments to key state institutions, and small political parties demanding lower barriers to enter parliament.

IV. LEGAL FRAMEWORK

The electoral legal framework primarily comprises the 1964 Constitution (last amended in 2014), the 1991 General Elections Act (GEA, last amended 2015), the 1939 Electoral Polling Ordinance (last amended 2007) and the 1942 House of Representatives (Privileges and Powers) Ordinance (last amended 2007).⁶ In line with previous OSCE/ODIHR and Group of States against Corruption (GRECO) recommendations, the Financing of Political Parties Act (FPPA) was adopted in 2015.⁷ Malta is party to major international and regional instruments related to the holding of democratic elections.

Since the 2013 parliamentary elections, a limited number of amendments have been introduced to the GEA and the Constitution. They included changes to further detail voting procedures in retirement homes and hospitals, a requirement for voter lists to be published within five days after the elections are called, and an extension of franchise to voters who reached the voting age up until the eve of election day and to individuals with suspended jail sentences. Proposals for other amendments were put on hold upon the call for the early elections.⁸

The recently adopted FPPA does not only regulate the financing of political parties, but contains provisions regulating parties more broadly. Its definition of a political party is not synonymous with the definition contained in the GEA. Several OSCE/ODIHR EAM interlocutors argued that the insufficient harmonization of the two laws raises concerns as to which act takes legal precedence. Moreover, the EC that administers the FPPA can only enforce it through administrative rather than criminal courts, which reduces its sanctioning power. Shortly before the elections, the PN filed a case with the Civil Court, First Hall, challenging the FPPA's compatibility with Article 6(1) of the European Convention on Human Rights (ECHR) based on an assertion that owing to its composition

⁴ The Malta Files investigative project by the European Investigative Collaborations network attracted international media attention through a leakage of over 150,000 documents from a Malta-based provider of legal and corporate services, which allegedly helped international corporations to avoid paying taxes.

⁵ The PD contested the elections jointly with PN, on the latter's ticket. Other parties included the PL, the Democratic Alternative (AD), Malta Patriots Movement (MPM) and *Alleanza Bidla* (AB).

⁶ Specific aspects of elections are further regulated by the 1931 Public Meetings Ordinance and the 1991 Broadcasting Act. The Standards in Public Life Act was adopted by parliament in March 2017, but was not in force at the time of the elections.

⁷ This includes corresponding amendments to the Constitution as Article 55(1) new paragraph (ff) added, and a corresponding change in Article 63 new paragraph (d) added. See GRECO reports on the [Transparency of Party Funding in Malta](#).

⁸ Proposed amendments included a new media law, provisions for out-of-country voting, voting inside prisons, further provisions for advanced voting in Gozo, the introduction of electronic vote counting and a legal definition of the four days of (also advanced) voting.

the EC does not satisfy the guarantee of independence as an adjudicating authority (see *Election Administration* section).⁹

Overall, the legal framework is comprehensive and provides a sound basis for the conduct of democratic elections. Nevertheless, the ambiguities listed above as well as previously unaddressed OSCE/ODIHR recommendations, such as the absence of provisions for citizen and international election observation, leave room for improvement.

The electoral legal framework should be reviewed to address OSCE/ODIHR recommendations as well as to consolidate and harmonize the legislation and to address any ambiguities. Reform should be undertaken well in advance of the next elections and involve open consultation with all relevant stakeholders.

V. ELECTORAL SYSTEM

Malta is divided into 13 multi-mandate electoral districts. Each district elects five representatives for a five-year term through a single transferable vote (STV). Voters indicate their preferences by ranking in numerical order as many candidates on the ballot as they wish. Candidates are elected if they receive no fewer first preference votes than the quota. The quota is determined by dividing the total number of valid ballots in each electoral district by the number of seats plus one. If votes received exceed the quota, then surplus votes are distributed to the second preference candidates.¹⁰ Following this procedure, if no candidate is elected during any of the preference counts, then the candidate with the lowest number of votes is excluded and their votes are redistributed to the next ranked choice on the ballot. Successive counts are undertaken until all seats have been allocated.

Following constitutional amendments, the electoral system was modified to ensure that the number of seats allocated to parties is proportionate to first preference votes obtained by their candidates nationwide, and to guarantee an absolute majority of seats in parliament for the party that obtains a relative majority of votes.¹¹ The number of seats in parliament is set at 65, but depending on the results, it can be increased to achieve these objectives.

Some OSCE/ODIHR EAM interlocutors expressed concerns that the quota needed to win a seat in a district constitutes a de facto threshold that may disadvantage small parties and independent candidates whose support is limited and dispersed across different districts. In addition, constitutional provisions that aim to ensure proportionality and governability by awarding additional seats to parties in parliament contribute to consolidating bipartisanship.

The EC is mandated to review electoral boundaries at least every five years, with the latest revision adopted by parliament in March 2017. The reviews are undertaken to maintain a constitutional requirement that the size of any electoral district does not deviate by more than five per cent from the national quota, obtained by dividing the total number of voters by the number of seats to be returned to parliament.

⁹ The case was opened on 25 May, but proceedings were adjourned until 28 September. Article 6(1) of the ECHR protects the right to a fair trial, in particular by an independent and impartial tribunal established by law.

¹⁰ Any ballot in which the voter has not expressed second or subsequent preferences is non-transferable.

¹¹ In 1987, Article 52 of the Constitution was amended so that the party that obtains more than 50 per cent of valid first preference votes is guaranteed a parliamentary majority by being allocated additional seats. Successive amendments in 1996 and 2007 furthered proportionality, but only as long as no more than two parties obtain seats.

During the last boundary review process, the EC submitted two different proposals for adoption by parliament, with the final version adopted by the PL majority. While no formal complaints were submitted, some OSCE/ODIHR EAM interlocutors alleged that the review process, which altered the boundaries of 10 of the 13 districts, lacked sufficient transparency and inclusivity.

VI. ELECTION ADMINISTRATION

The EC is the permanent body responsible for the overall conduct of elections.¹² Its eight members are appointed for a three-year term based upon a proposal by the prime minister and in consultation with the leader of the opposition. EC members are conventionally drawn in equal number from the two parliamentary parties. In addition, the Chief Electoral Commissioner (CEC) is appointed from the public service on advice of the prime minister. Parliamentary parties can also nominate two non-voting delegates. The current CEC was appointed in February 2014 and other EC members in August 2015. There are no women among the EC members. No gender-disaggregated data on the composition of lower-level commission was made available by the EC for these elections.

There is no level of election administration between the EC and the polling stations. For these elections, there were 645 polling stations in 110 polling centres. Polling stations were managed by Assistant Election Commissioners (AECs) nominated by political parties (one per party per station) and by the EC (two per station).¹³ Given their limited membership and resources, small parties were not able to nominate a sufficient number of AECs to ensure their wide presence.

In addition to AECs, parties participating in the elections nominated agents to be present at the opening and closing of polling stations. Political parties are permitted to nominate agents who are already nominated as AECs, leading to a potential conflict of interest. Counting is centralized in a national counting centre. The nomination and appointment of counting staff followed a procedure analogous to that of the AECs.

Consideration should be given to reviewing legal provisions for the appointment of individuals as both assistant commissioners and party agents to avoid any conflict of interest.

During the election period, the EC met at least once a week in closed sessions and its decisions were generally only communicated to those whom they concerned. No minutes or decisions were published except press releases and government notices, which limited transparency and may not be in line with international standards on the right to access information.¹⁴ According to the EC, decisions were normally taken by consensus, which was not reached only in exceptional cases. Commissioners assumed positions consistent with their nominating party's line in particularly sensitive matters, such as the proposals of reviewing constituency boundaries.

The EC generally enjoyed the confidence of stakeholders, and given the limited time it had to prepare, it organised and administered the elections efficiently and professionally. However, in light

¹² Apart from the EC, the Electoral Office (EO) is charged with organisational and operational aspects of elections, including early voting, prisoners who are eligible to vote, the elderly and hospitalized voters. The EO also creates and distributes manuals, delivers training to polling and counting staff and hosts the EC website. The office is staffed with some 40 public servants under the supervision of the CEC.

¹³ The law requires that at least one person nominated by the EC is present inside a polling station at all times.

¹⁴ Paragraph 19 of General Comment 34 by the UN Human Rights Committee on Article 19 of the International Covenant on Civil and Political Rights (ICCPR) states that "to give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. State parties should make every effort to ensure easy, prompt, effective and practical access to such information."

of the politicized method of appointment of its members, representatives of non-parliamentary parties, independent candidates and several other interlocutors noted that the EC, similar to the legal framework for elections, favours the existing two-party system. For instance, the GEA allows parties fielding no fewer than four candidates in all electoral districts to include their party logo and candidate names on the ballot in a distinctive colour.¹⁵ Similarly, while the two parliamentary parties have access to all counting centre premises, agents of non-parliamentary parties are limited to a specific area. Unequal treatment of political parties runs contrary to paragraph 7.6 of the 1990 OSCE Copenhagen Document.¹⁶

The EC should consider a new ballot design where all parties and candidates are presented equally. Consideration should also be given to allowing all parties contesting the elections full and unimpeded access to all stages of the electoral process, including all facilities within the counting centre.

VII. VOTER REGISTRATION

Citizens who have reached the age of 18 years on the day preceding election day are eligible to vote, except those declared incompetent by a court or serving a prison sentence of more than one year.¹⁷ The latter disproportionate restriction is not in line with paragraph 7.3 of the 1990 OSCE Copenhagen Document, and other international obligations, including European Court of Human Rights (ECtHR) jurisprudence.¹⁸

Restrictions of voting rights for prisoners should be reviewed to ensure that any limitation is proportionate to the crime committed and clearly outlined in the law.

The Constitution also withholds the right to vote from anyone declared legally incapacitated “for any mental infirmity by a court decision or are otherwise determined in Malta to be of unsound mind.”¹⁹ In such cases, the GEA stipulates that the EC may neither refuse to register a voter nor remove their name from the register without a unanimous decision of a designated medical board.²⁰

The legislation should be harmonized with the objectives of the CRPD, to ensure the full voting rights of persons with various types of mental disabilities.

Malta has a passive voter registration system. Voters are registered in electoral districts in which they habitually reside. To be eligible, they must have spent at least 6 of the 18 months preceding the

¹⁵ Article 49(7) of the GEA. Traditionally the PL features in red and the PN in blue.

¹⁶ Paragraph 7.6 commits participating States to “respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities”.

¹⁷ An amendment to Article 33(5)(c) of the GEA states that “any person who has since the publication of the last revised Electoral Register attained or shall attain the age of eighteen years up to and including the day preceding the day on which the election is to be held provided that such persons are [...] qualified to be registered as voters in accordance to article 57 of the Constitution of Malta.”

¹⁸ Paragraph 7.3 states that the participating States will “guarantee universal and equal suffrage to adult citizens”. See also Paragraph 14 of General Comment No. 25 to the ICCPR. For existing ECtHR jurisprudence, see *McHugh and others v. UK* 51987/08 (2015) and *Firth and others v. UK* 47784/09 (2014).

¹⁹ Malta has signed and ratified the [2006 United Nations Convention on the Rights of Persons with Disabilities \(UN CRPD\)](#). Deprivation of the right to vote on the basis of mental disability is inconsistent with Articles 12 and 29 of the UN CRPD.

²⁰ Article 14(2) of the GEA states that a medical board shall be composed of medical doctors appointed by the EC and each of the political parties.

election in the country. Given Malta's membership in the Schengen Area of passportless travel, there are concerns whether it is possible to enforce this residence requirement.

The voter register is updated on the basis of civil registration data managed by Identity Malta, the state body in charge of issuing identity cards, which receives information from the Public Registries of Malta and Gozo. Outside of election periods, an update of the voter register is published for public scrutiny biannually. During an election period, the EC is required to publish a revised voter register no later than five days after the elections are called. Beyond this date, modifications may only be made by the EC based on a court decision, but no later than 15 days before election day. The final number of registered voters for these elections was 341,856.

In order to vote, voters are required to present a voting card produced by the EC. Police officers, accompanied by party representatives, distribute voting cards ahead of each election: a procedure that some OSCE/ODIHR EAM interlocutors described as potentially intimidating. Undelivered cards may be collected at local police stations or the counting centre. According to the EC, some 10,000 cards were left uncollected. Some interlocutors noted that the introduction of biometric national ID cards rendered the voting cards redundant and an unjustifiable expense. In addition, some claimed that the cards were prone to smudging and could be easily manipulated.

Overall, the voter register was inclusive and the registration process enjoyed stakeholder confidence. However, in the weeks preceding the elections, the PN voiced concerns about media reports claiming that an internal audit of the national ID card system carried out by Identity Malta revealed that multiple ID cards had been issued to more than 80 individuals. In response, the EC conducted an audit of the voter register, and found only one voter with a double entry, one of which was eliminated.

The authorities could consider reviewing the voting card requirement to lower the election expenditure and eliminate the risk of disenfranchisement of voters not in possession of such cards on election day.

VIII. CANDIDATE REGISTRATION

Candidates can stand independently or be nominated by a political party. Requirements for registration are simple and non-onerous. To be registered, candidates must submit support signatures of at least four voters registered in the electoral district for which they are nominated and a EUR 90 deposit. The law establishes several incompatibilities to standing for election, including holding another nationality or an elected office, being a member of the armed forces, a government contractor or declared bankrupt, or serving a prison term of more than one year. While these restrictions are intended to prevent conflicts of interest, several are not in line with international standards, including Paragraph 7.5 of the 1990 OSCE Copenhagen Document, international good practice, and ECtHR jurisprudence.²¹

²¹ Paragraph 7.5 provides that participating States will respect the right of citizens to seek political or public office without discrimination. See also paragraph 15 of General Comment No. 25 to the Article 25 of the ICCPR. In the case *Tanase v. Moldova* (2010), the ECtHR held that restrictions on suffrage rights of dual citizens were disproportionate and, thus, contrary to Article 3 of Protocol 1 of the ECHR; this restriction is also contrary to Article 17 of the European Convention on Nationality (signed but not ratified by Malta). For existing ECtHR jurisprudence on insolvency or bankruptcy, see *Taiani v. Italy* 3641/02 (2006). See also, section I.2.2.2.iv of the 2002 [Code of Good Practice in Electoral Matters](#) (Code of Good Practice) of the European Commission for Democracy through Law (Venice Commission).

Limitations on the right to stand for office could be reviewed to further enhance full compliance with OSCE commitments and other international obligations and standards.

Candidate registration commenced on 11 May and lasted three days. Although the EC acknowledged that the registration period is short, no official complaints were lodged in this regard. The GEA permits candidates to register in up to two districts, and the EC registered a total of 352 candidatures of 211 individuals nominated by five political parties.²² Two candidates ran as independents.

The PN and PD contested the elections under an agreement, whereby the 11 PD candidates ran on the PN ticket.²³ Because the electoral system is thought to favour bipartisanship, the arrangement was described by some interlocutors as a more probable way for a small party to obtain parliamentary representation.

The legislation does not contain temporary special measures to promote the political participation of women, as recommended in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) General Comment 23.²⁴ Of the 211 candidates, only 42 were women.²⁵

Consideration could be given to encouraging women's political participation through the introduction of temporary special measures.

According to the Malta Gay Right Movements, seven self-declared members of the lesbian, gay, bisexual, transgender, queer and intersex community, including one transgender candidate, stood in the elections.

IX. CAMPAIGN

The campaign period commenced upon the announcement of the elections and ended 24 hours before election day. Campaigning is largely unregulated, except for prohibitions on the display of materials in public areas. The law guarantees freedoms of assembly and expression and contestants could campaign without undue limitations throughout the country.

The campaigns of the two parliamentary parties were highly visible, with billboards and banners prominently displayed in urban areas and alongside main roads. Both parties also held a number of well-attended mass rallies in prime locations.²⁶ Small parties enjoyed little visibility and, allegedly because of insufficient resources, limited their outreach activities to social media.

The two leading parties also campaigned door-to-door, with direct contact with voters extending into the campaign silence period. Voters received phone calls and text messages, often in high number, encouraging them to vote for specific candidates on the eve of and on election day. Party agents were observed collecting names and handing out materials outside of polling stations. Some interlocutors described these practises as intrusive as regards to the rights of voters to express their choice freely

²² The PN put forward 111 candidates, including 11 from the PD, while PL fielded 70. The MPM contested the elections with 14 candidates, AD with 10 and AB with 4.

²³ The Constitution does not provide for formal pre-electoral coalitions.

²⁴ See paragraph 15 of the 1997 CEDAW General Recommendation No. 23: Political and Public Life. Paragraph 23 of the 1999 OSCE Istanbul Document commits participating States to "making equality between men and women an integral part of [their] policies."

²⁵ The PL fielded 9 women (13 per cent of its list), PN 27 (24 per cent), MPM 4 (29 per cent), and AD and AB one each (10 and 25 per cent, respectively).

²⁶ The OSCE/ODIHR EAM observed four such rally events: two in Valletta and one each in Sliema and Hal Far.

and without undue interference. Citing privacy concerns, several interlocutors also expressed unease with the amount of voter data available to political parties.

Some interlocutors noted that the campaign was overwhelmingly dominated by political confrontation between the PL and PN and lacked more substantive discussion. There was limited interchange among contestants, with only one debate taking place among representatives of the two parliamentary and some of the smaller parties. The relative invisibility of the smaller parties and independent candidates' campaigns, especially in the media, raised concerns whether voters were able to make a fully informed choice.

Candidates generally campaigned on their party platforms rather than their individual programmes. Although the campaign was heated, the two leading contestants did not present distinctively different platforms. Both the PL and PN promised infrastructure development and tax reform and espoused continuation of similar economic policies, thus giving rise to criticism that the electorate did not have a wide choice of political alternatives.

The overall campaign environment was peaceful, but campaign rhetoric was often aggressive and dominated by instances of negative campaigning. The governing party stressed its achievements in office and many PL candidates argued that a PN-PD coalition government would result in chaos and mismanagement of the economy. Anonymous billboards depicting opposition politicians and slogans suggesting their inaptitude to govern dotted many intersections.

The PN and the PD focused their joint campaign on allegations of corruption and the ongoing probe against a number of officials and their family members. Small parties generally criticized the bipartisanship and stressed the need for alternative forces to help balance the duopoly in parliament.

In the run up to the elections, billboards paid for by state bodies displaying the government's achievements went up across the country. Full-page ads and video clips featuring similar content appeared in leading newspapers and were aired on private TV channels after they were banned from the public broadcaster.²⁷ Several interlocutors pointed out that the period preceding the elections saw a high number of employment offers in the public sector, as well as a series of promotions of state employees and civil servants, including in the military. Such instances blur the line between party and state and challenge paragraph 5.4 of the 1990 OSCE Copenhagen Document.²⁸

Some interlocutors and media alleged that food parcels and other goods were distributed to voters during the campaign. Several criticised the authorities' inaction to such allegations in the face of verifiable violations of the law.

Women did not enjoy significant visibility in the campaign, although they were well represented in the audiences at campaign rallies. Given the limited presence of women in the political process, most Both parliamentary parties and some of the small political forces were supportive of introducing special measures to espouse efforts, including recourse to positive measures, to increase the number of women in parliament.

²⁷ During the campaign, the BA issued two bans to the public broadcaster, identifying more than five government ads, which were deemed to include campaign content.

²⁸ Paragraph 5.4 prescribes "a clear separation between the State and political parties; in particular, political parties will not be merged with the State."

X. POLITICAL PARTY AND CAMPAIGN FINANCE

After several critical evaluations of the system of political party and campaign finance, as well as previously unsuccessful attempts of reform, the parliament adopted the FPPA and amended the GEA in late 2015.²⁹ The FPPA entered into force on 1 January 2016 and many provisions were implemented for the first time during these elections.

The political party system is characterised by highly asymmetric financial and organisational power of its constitutive formations. The two parties with parliamentary representation each have more than a hundred permanent staff and own significant business interests, including real estate, media outlets, as well as sports clubs and bars. In their 2016 annual financial statements, the PL and PN listed their assets valued in excess of EUR 21 million and EUR 16 million, respectively. According to some OSCE/ODIHR EAM interlocutors, many of the companies under the parties' control are unprofitable, thus making their owners highly dependent on contributions.³⁰

A. DONATIONS AND EXPENDITURE

Donations are the main source of party income. They can be collected by party members or candidates, including in cash. Both legal entities and individuals can each donate up to EUR 25,000 per calendar year. Donor identity must be made public for donations exceeding EUR 7,000. Contributions above EUR 500 must be reported to the EC, while donations above EUR 50 must only be recorded and those below this figure can be made anonymously. There are no limits on or disclosure requirements for contributions to business interests owned by political parties, thus constituting a potential loophole for collection and reporting of donations. Unrecorded donations and high disclosure thresholds run counter to international obligations and good practice: they limit transparency, hamper subsequent controls and enable manipulation of accounts or the establishment of secret funds.³¹

To foster greater transparency and make the reporting system more effective, donations to parties and the entities they own should be subject to similar reporting and public disclosure requirements.

To enhance transparency and facilitate oversight, consideration could be given to a requirement that donations above a certain amount only be made through a designated bank account. Moreover, authorities could consider requiring parties to record all donations and lowering the disclosure threshold.

Political party and candidate campaigns are conducted in parallel and are essentially indistinguishable. Both parties and candidates fundraise, with the former relying on their media interests to collect contributions through so-called 'telethons' (see *Media* section). While there is no state funding for either political parties or election campaigns, the two parliamentary parties each receive EUR 100,000 annually to support their legislative activities. These funds may be used for

²⁹ See the [2014 OSCE/ODIHR and Venice Commission Joint Opinion on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections](#). See also the 2013 [OSCE/ODIHR Malta EAM Final Report](#), the 2009 [GRECO evaluation report on Malta](#), as well as the [October 2011](#), [December 2013](#), [October 2014](#), [October 2015](#), and [March 2017](#) compliance reports.

³⁰ For instance, party ownership of costly and non-profitable media outlets is thought to increase dependence on donors and advertisers.

³¹ See Article 7.3 of the [2003 UN Convention against Corruption](#) obliges states to "consider taking appropriate legislative and administrative measures... to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties". See also paragraphs 194 and 201 of the [OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation](#).

other purposes, including campaigning. Several OSCE/ODIHR EAM interlocutors remarked that they would welcome the introduction of a system of state funding of political parties as a way to facilitate political pluralism.

Although there is no spending ceiling for political party campaigns, candidates are each limited to spend EUR 20,000, increased from the previous cap of EUR 1,400. This spending limit can be changed at any time by the Minister of Justice, Culture and Local Government – who may also stand as a candidate – in agreement with the EC.³² While the ability to adjust the spending limit may be desirable, the absence of sufficient safeguards, such as a qualified majority-voting requirement in the EC and a ban on changes to the spending limit within a year of the elections, raises some concerns about legal certainty and a level playing field.

To assure equality among candidates and foster legal certainty, the ministerial power to change candidates' spending ceiling could be reconsidered. Consideration could be given to adjust the spending limit based on a form of indexation rather than an absolute amount.

B. OVERSIGHT, REPORTING AND DISCLOSURE

The EC is vested with oversight responsibility for party and campaign finance. While candidates are required to report their paid and unpaid expenses within 31 days after the publication of election results, political parties must only report their elections-related finances in their annual reports: no separate campaign reports are foreseen. This diminishes transparency as both voters and the EC are denied important information about campaign finances until a year after the elections. There is no requirement to disclose donors or expenses before the elections. Weekly donation reporting was debated during parliamentary discussions on the FPPA, but never adopted.³³

To enhance transparency, parties' elections-related income and expenditure should be made public shortly after the elections. Consideration could also be given to introducing a disclosure requirement on income and expenditure before election day.

Political parties are required to submit externally audited annual reports and lists of donations to the EC within four months after the end of their financial year. Although all parties operate their finances on the basis of a calendar year, the freedom to choose their own reporting timeframe limits the quality of the analyses and comparisons of the reports. The EC published on its website the 2016 donation reports ahead of the elections. Shortly after election day, it uploaded the audited financial statements of all parties except for the PN, whose statement was added close to a month later.³⁴

Sanctioning procedures are established separately for parties and candidates: the FPPA regulates the former, while the GEA the latter. For parties, measures include “mere exposure and adverse comment” by the EC, as well as fines ranging from EUR 100 to 20,000. An appeal to the First Hall, Civil Court is possible. The Minister for Justice, Culture and Local Government may further regulate sanctioning procedures, or levy additional penalties up to EUR 50,000.

³² Article 44(1)(d) of the FPPA states that the Minister may change, in agreement with the EC, “the maximum amount of permissible campaign expenditure by candidates in any general election, in any election of members of the European Parliament or in any local council election.”

³³ Interim reports or regular updating of donation and expenditure information before elections enable checks by interested individuals, media and the authorities vested with the prevention of corruption.

³⁴ Parties can be fined up to EUR 10,000 for submitting false reports, missing reporting deadlines or failing to submit altogether.

Candidates can be fined EUR 465 for submitting false reports or exceeding the spending ceiling. In addition, they may be barred from voting or standing as candidates for four years. Prosecution can only be undertaken by the Attorney General or, exceptionally, the EC can request the Constitutional Court to decide whether to withdraw a mandate after it determines that an elected candidate's report is *prima facie* false. In meeting with the OSCE/ODIHR EAM, both the Attorney General and the EC confirmed that no campaign finance-related proceedings were instituted by either body since the sanctioning provisions were introduced in the 2007 amendments to the GEA. In March 2017, the EC appointed a three-member committee, tasked with investigating allegations of violations of the FPPA.³⁵ The work of the committee was postponed for the duration of the elections.

To improve the effectiveness of the sanctioning procedures, authorities could consider reviewing the legislation to allow anyone to initiate campaign finance violation proceedings without the necessary recourse to the Attorney General or the EC.

Freedom of expression is protected for entities and individuals not affiliated with parties or candidates, but the absence of a requirement for imprint information about who ordered and paid for the production and display of elections-related materials limits transparency and does not provide sufficient safeguard against abuses of spending rules. Third-party campaigns, which could circumvent donation or spending ceilings, are unregulated.³⁶

To enhance transparency and enable voters to make informed choices, authorities could consider introducing a requirement that all election-related campaign materials contain imprint data with information about the entity that ordered and paid for their production and display.

XI. MEDIA

A. MEDIA LANDSCAPE

The media landscape is pluralistic, but editorial independence and the public's ability to access a wide range of views are negatively impacted by the two leading political parties' ownership of major media outlets, which are used as vehicles for promoting their political interests.³⁷ Public trust in the media ranks amongst the lowest in the EU.³⁸

TV is the most popular source of information, followed by the Internet and radio. There are 7 TV and 13 radio stations, as well as at least a dozen newspapers. The public broadcaster (PBS) operates three radio stations and two TV channels, with *TVM* being the most popular, followed by the party-owned *ONE TV* and *NET TV*.³⁹ Other commercial stations have lower viewership. The most popular radio stations are the privately owned *Bay Radio*, the party-owned *ONE Radio* and *Radio Malta* operated

³⁵ In the run up to the elections, representatives of the two parliamentary parties waged mutual accusations of breaches of FPPA provisions. According to media reports, the PL claimed that the PN accepted illicit donations and falsified the accounts of its media holding. The PN, in turn, accused the PL of failing to present a list of all donations it received and illicitly financing its officials' activities from the state budget.

³⁶ The EC informed the OSCE/ODIHR EAM that it would examine the issue of anonymous billboards used in the campaign only after it had received parties' annual financial reports in 2018.

³⁷ *NET TV* and *Radio 101* are owned by the PN, while *One TV* and *One Radio* belong to the PL. Both parties also control the main Maltese-language newspapers: the PN owns the daily *In-Nazzjon* and weekly *Il-Mument*, while PL controls the weekly *Kullhadd*. The daily *L-Orizzont* belongs to General Workers Union (GWU), but its editorial line reflects PL policies.

³⁸ Some 51 per cent of the population do not trust the media. See [Standard Eurobarometer 84, Autumn 2015](#).

³⁹ The PBS operates *TVM*, *TVM2*, as well as the radio stations *Magic Malta*, *Radio Malta* and *Radio Malta 2*.

by PBS. Apart from several party-owned and a small number of independent Maltese-language newspapers, three independent papers are published in English, but their circulation is in decline.⁴⁰

Some 77 per cent of the population uses the Internet as a regular source of information, but the figure declines markedly for those over the age of 55 years. Social media has become an important stage for political debate, with some 55 per cent of claiming to be active users.

B. LEGAL FRAMEWORK

Freedom of expression is enshrined in the Constitution and generally respected. However, according to many OSCE/ODIHR EAM interlocutors, libel suits are regularly filed to influence critical media coverage. Contrary to previous OSCE/ODIHR recommendations, insult and defamation remain criminal offences and courts have used preventive asset-freeze mechanisms against journalists, provoking criticism from the OSCE Representative on Freedom of the Media over a possible chilling effect on free speech.⁴¹

Criminal liability for defamation and insult should be repealed and replaced with reasonable civil sanctions that do not limit free speech or threaten the economic survival of media outlets.

The Constitution requires that political reporting in broadcasting be impartial and that coverage be fairly distributed amongst various parties, and entrusts enforcement to the Broadcasting Authority (BA).⁴² Provisions mandating impartiality are also included in the Broadcasting Act and BA directives, including special rules for elections.⁴³ Paid political advertising on TV is prohibited, but the BA allocates free airtime to contestants and organizes debates. The two parliamentary parties were each granted 120 minutes of free airtime for campaign spots; other parties were each given 20 minutes and independent candidates received three-minute interviews.

Owing to its composition and the appointment procedure, the BA is generally not perceived as an independent regulator.⁴⁴ Various OSCE/ODIHR EAM interlocutors, including those representing the BA, acknowledged that the institution focuses its regulatory mandate on the PBS and does not enforce the impartiality and fairness rules on private outlets. Instead, media owned by the two leading political parties are permitted to balance out each other's political bias. The BA does not actively monitor campaign coverage, but acts on complaints and can impose monetary fines if it establishes a violation.⁴⁵ No fines were imposed during the 2017 campaign.

⁴⁰ *Times of Malta* is the most popular of the three English language newspapers in the country (the others being *Malta Today* and *Malta Independent*).

⁴¹ See the [OSCE Representative on Freedom of the Media](#) statement on 15 February 2017.

⁴² The Broadcasting Authority consists of a chairman and four members, all appointed by the president after consulting the prime minister and the leader of the opposition.

⁴³ In a 2017 directive, while insisting on safeguarding balance and impartiality, the BA recognized that it would be “practical [...] to consider programming schedules submitted to it by the political stations in the light of Article 13(2) of the Broadcasting Act”, which explicitly mandates the BA to take into account various broadcasting outlets as a whole when determining impartiality.

⁴⁴ The Council of Europe [Recommendation No. R \(96\) 10 of the Committee of Ministers to member states on the guarantee of the independence of public service broadcasting](#) states that rules governing the appointment of the regulator should be defined in a way which eliminates the risk of political interference, and where members are chosen in an open and pluralistic manner to collectively represent interests of the society as a whole.

⁴⁵ Fines for breaches of impartiality rules range between EUR 930 and 1,750.

The only legal demand placed on print media is to observe the campaign silence period. Campaign coverage in print media is largely self-regulated.⁴⁶

C. CAMPAIGN COVERAGE

The media provided voters with diverse views, but genuine debate was curtailed by the heavily partisan and recriminatory campaign coverage. The Prime Minister refused to be interviewed or participate in debates organised by two of the three English language newspapers that backed the PN's anti-corruption campaign. Instead, he resorted to actively employing social media and face-to-face meetings to deliver a direct message to the voters.

While traditional media observed campaign silence provisions, paid advertising continued on social networks. Candidates also posted campaign related statements and slogans, leading others to mirror the practice after having first publicly criticised the EC for failing to enforce campaign silence rules.

The BA organised four pre-election debates on PBS channels: two were devoted to the two leading parties, one to their leaders, and one to the smaller parties.⁴⁷ The two independent candidates were not featured at all. This prompted claims of unequal treatment and several formal complaints were filed by small parties. They alleged an uneven playing field in light of the PL and PN's privileged access to the media as a function of both their ownership of major outlets and status as parties with parliamentary representation.⁴⁸ Citing that the format that did not allow for a face-to-face exchange with the representatives of the two leading forces, the AB refused to participate in the PBS debate altogether. As in the case of BA, the provision for the government's appointment of PBS management was cited by many OSCE/ODIHR EAM interlocutors as the basis for the view that the PBS lacks independence and exhibits political partiality toward the incumbent.

To increase public trust and foster representation of wider political positions and societal interests, consideration could be given to revising the rules for the appointment of members of the broadcasting regulator and PBS management in a manner, which enhances independence.

XII. CITIZEN AND INTERNATIONAL ELECTION OBSERVATION

The legal framework does not provide for citizen or international election observation, falling short of compliance with paragraph 8 of the 1990 OSCE Copenhagen Document.⁴⁹ However, in line with its OSCE commitments, the authorities provided the OSCE/ODIHR EAM unimpeded access to all stages of the electoral process. OSCE/ODIHR EAM observers were accredited by the EC and welcomed by all election stakeholders. No citizen observation was undertaken for these elections.

Consideration should be given to amending the legal framework to explicitly provide full access to the electoral process for international and citizen observers.

⁴⁶ The Press Ethics Commission operates under the auspices of a self-regulation non-governmental organization, the Institute of Maltese Journalists. Citing insufficient resources, many interlocutors described the institution as ineffective.

⁴⁷ In addition, several debates were organised by private producers and purchased by the PBS.

⁴⁸ The BA received 10 complaints concerning PBS news coverage, of which 2 were found grounded. It also considered three complaints filed by small political parties alleging an unfair distribution of free airtime, none of which was found grounded. In one complaint, the AB estimated that it was allocated some 35 minutes of airtime on PBS channels, while the two parliamentary parties each received 540 minutes.

⁴⁹ Paragraph 8 provides that "participating States consider that the presence of observers [...] can enhance the electoral process for States in which elections are taking place".

XIII. COMPLAINTS AND APPEALS

The resolution of election disputes is primarily regulated by the Constitution and the GEA. Challenges may be lodged with reference to voter registration, nomination of candidates or other elections-related matters, including the results. The 2013 OSCE/ODIHR recommendation related to complaints and appeals remains unaddressed.

Voters could appeal against errors in the voter register within 15-days of its publication.⁵⁰ Revising Officers are mandated to review requests for amending the voter register and appeals against these decisions may be filed with the Court of Appeal.⁵¹ While the law requires Revising Officers and the Court of Appeal to halt addressing all elections-related disputes 14 days before election day, there are no specific deadlines for considering complaints.⁵² The EC received summons to the Court from Revising Officers for 180 voter registration appeals.⁵³ Of these, voters were granted the right to vote in 113 cases, were re-registered in another district in 17 cases, and were denied registration in 9 cases. Forty-one cases were either denied, withdrawn or adjourned indefinitely.⁵⁴

Objections to the process of candidate nomination must be addressed to the EC within two days after the deadline for receipt of nominations. Appeals against EC decisions can be made to the Court of Appeal. The EC received four objections related to candidate nomination. One complaint was filed by the Malta Patriots Movement (MPM) regarding an AB candidate nominated in more than two districts. The objection was accepted by the EC, then appealed against, but the appeal was denied.⁵⁵ Another was lodged by an AB candidate after she was refused registration for having submitted her documents late. The court accepted the candidate's argument that she commenced the registration process earlier and only delivered some of the supporting documentation past due. The same candidate then appealed the EC decision of not allowing her to register in more than two districts. This appeal was adjourned indefinitely. Finally, the PN filed a complaint alleging that one PL candidate's nomination was not filed in person. The EC rejected the complaint, and it was not appealed.

The Constitutional Court adjudicates other elections-related appeals, including those pertaining to the results.⁵⁶ The law does not provide a deadline for the Court to adjudicate petitions referred to it. According to the EC, one complaint pertaining to results was filed by the PL, which contested the decision to award two additional seats to the PN in accordance with the constitutional proportionality rule. The PL argued that the rule only applies in cases when two parties obtain parliamentary seats, and alleged that candidates affiliated with the PD – who stood and won on a PN ticket – constitute a *de facto* third political force in parliament. The Constitutional Court rejected the claim, arguing that

⁵⁰ The regular period of 21 days was shortened to accommodate the early elections.

⁵¹ Revising Officers are designated Magistrates in the Court of Magistrates. Any additions, cancellation or corrections to the voter register ordered by the Revising Officer are published in Government Gazette.

⁵² Article 42 of the GEA states that Revising Officers and the Court of Appeal “shall adjourn *sine die* the consideration of all applications filed under the provisions of this Act and still pending fourteen days before the date fixed for the election”.

⁵³ An individual may appeal to Revising Officers regarding the inclusion, exclusion or correction of his/her name and details in the electoral register.

⁵⁴ According to information provided by the EC.

⁵⁵ According to Article 51(3) of the GEA, objections may be made to a nomination on several alternative grounds, one being that “the candidate already stands nominated for two electoral divisions”.

⁵⁶ Article 95(2)(b) of the Constitution. See also the *Legal Framework* section for inconsistency between Article 95(2)(b) of the Constitution and Articles 3 and 4 of the ECA.

candidates nominated by only the two parties were elected.⁵⁷

The EC considers other complaints on a rolling basis. If a given complaint requires the attention of all commissioners, it is discussed at the next meeting and the decision is communicated directly to the complainant. Decisions are not made public and no statistics on the number or types of complaints are available. Although OSCE/ODIHR EAM interlocutors did not express concerns with the system of election dispute resolution, this practice, together with the absence of deadlines for higher courts to adjudicate complaints undermines the transparency and accountability of the process, thus raising concerns about access to the right to effective remedy and challenging paragraph 5.10 of the 1990 OSCE Copenhagen Document.⁵⁸

To enhance the transparency and accountability of the system of electoral dispute resolution, records of complaints and EC decisions should be published. Consideration should also be given to setting specific deadlines for the adjudication and publication of election-related complaints and appeals by the EC and the courts.

XIV. VOTING, COUNTING, TABULATION AND ANNOUNCEMENT OF RESULTS

In accordance with OSCE/ODIHR standard practice, the OSCE/ODIHR EAM did not observe early voting, election day procedures and the transfer of ballot boxes to the national counting centre in a comprehensive and systematic manner. Nevertheless, mission members visited a limited number of polling stations on election day in eight electoral districts, as well as the national counting centre during early voting and counting and the tabulation of results.

A. VOTING

The GEA provides for advance voting by citizens who reside abroad or are outside of the country on election day, as well as for voters in retirement homes and hospitals.⁵⁹ Election commissioners and AECs also vote early. Voters who qualify for early voting were required to submit a declaration to the EC at least one week before election day. Early voting was scheduled on four inconsecutive days during the week preceding the elections from 27 May to 2 June. Early voting took place at the counting centre, as well as in designated retirement homes and hospitals.

In polling stations visited, voting was conducted in an orderly manner, with procedures efficiently managed by polling staff, and voters able to cast their ballots in a peaceful environment. AECs were cooperative and provided members of the OSCE/ODIHR EAM with most of the requested information, although in some cases they deferred questions or requests for information to the EC.

On election day, voting started at 7:00 and finished at 22:00. Procedures for voter identification and voting were properly implemented in all visited polling stations, all staffed with two EC-nominated AECs and one each representing the PL and PN. AECs nominated by other parties, mostly the AD, were noted in some polling stations. Party agents were able to observe the opening and closing, and in some cases were provided names of voters who did not turn out, a practice that some interlocutors

⁵⁷ Both the Constitution and the GEA include provisions that take for granted that only two parties are represented in parliament. The pre-electoral agreement between the PD and PN under the latter's ticket served to underline the ambiguity of applying some provisions when three or more parties obtain representation.

⁵⁸ Paragraph 5.10 states that "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity."

⁵⁹ Article 77(3A)(a) of the GEA states that every registered voter not in Malta or hospitalised on the day of the election may vote seven days before polling day.

described as intimidating.⁶⁰ The EC publicized turnout figures twice during the day, at 14:00 and 22:00. Closing, reconciliation and the transfer of ballot boxes to the national counting centre were efficiently managed, where observed.

As in previous elections, voters residing or temporarily travelling abroad could make use of government subsidized tickets on Air Malta to cast their ballot in-country. A total of 1,717 voters benefitted from this initiative. As the arrangement only included the 21 cities served directly, voters in other locations did not enjoy an equal opportunity to exercise their franchise.

The GEA requires voters in need of assistance to read out loud their enumerated voting preferences in front of the AECs, with the chairperson marking their ballot accordingly.⁶¹ The polling station doors remain closed during the process, and no other voters were permitted inside. While the OSCE/ODIHR EAM noted the procedure being implemented correctly, the practice is not fully in line with OSCE commitments and international good practice as voters effectively waive their right to secrecy of the vote.⁶² Three braille templates per district were available for visually impaired voters.

Authorities should consider reforming provisions for assisted voting to ensure secrecy of the vote, in line with OSCE commitments and other international standards.

A total of 137 prisoners were registered to vote. On election day, correctional services facilitated their transportation to polling stations where they were registered.

B. COUNTING AND TABULATION

After voting, materials were reconciled inside polling stations with all ballot boxes sealed and then transported by the EC to the national counting centre. Counting began at 10:00 the following morning, with each electoral district counted at a separate counting station. Proceedings appeared to be conducted transparently with candidates and party agents able to observe from behind a transparent wall, ask questions and tabulate samples to determine the winning party prior to the announcement of official results.

Counting and tabulation were broadcast live on TV. National and district level official results were posted on the EC website. The GEA does not require that polling station level results be published, and no further disaggregated results were released, thus challenging paragraph 7.4 of the 1990 OSCE Copenhagen Document.⁶³

⁶⁰ Article 78(6)(c)(iii) of the GEA permits candidates, party agents and delegates to “record the names, the legally valid identification document and, or, the particulars of the persons who have not voted”.

⁶¹ Malta signed the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol (OP-CRPD) in 2007 and ratified both documents in 2012. However, it holds a reservation for Article 29(a)(i) and (iii) of the CRPD relating to assisted voting provisions.

⁶² Paragraph 7.4 of the 1990 OSCE Copenhagen Document commits the participating States to “ensure that votes are cast by secret ballot or by equivalent free voting procedure”. Article 25(b) of the ICCPR states that “every citizen shall have the right and the opportunity, without any of the distinctions [...] and without unreasonable restrictions: to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.” In addition, Article 29(iii) of the CRPD establishes that “state parties shall undertake to guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice.”

⁶³ Paragraph 7.4 of the 1990 OSCE Copenhagen Document also obliges participating States to ensure that votes “are counted and reported honestly with the official results made public”.

The EC should consider publishing detailed results of the elections disaggregated by municipality and polling stations to enhance transparency and voter confidence in the process.

C. ANNOUNCEMENT OF RESULTS

An hour after the beginning of counting and based on projections from the first 50 ballots counted at each counting station, the PL announced that it had won the elections with 55 per cent of the vote and an advantage of some 35,000 votes over the PN. The PN conceded shortly thereafter.

The EC published the official results from the first count the following day, and on 8 June, the names of winners in all districts were published in the Government Gazette. The PL and PN obtained 37 and 28 seats, respectively, but in accordance with the constitutional proportionality provision, the EC allocated two additional seats to the PN, thus increasing the number of members of parliament to 67. Voter turnout was reported at 92.1 per cent. The 10 women candidates who were elected constitute some 15 per cent of the new parliament.

The GEA allows candidates to run in two districts simultaneously, and candidates elected in both districts are required to withdraw from one. The vacated seat is filled through a ‘casual election’: a recount of subsequent preferences on the ballots of the candidate that withdrew. Casual elections were held to fill 12 vacant seats in 11 districts on 20 June. Only candidates that were originally on the ballot and consented to the casual election participated. Some OSCE/ODIHR EAM interlocutors opined that the provision allowing candidates to run in two districts is strategically used by parties to place popular candidates in districts where their party enjoys relatively lower support with the aim of obtaining higher first preference results.

XV. RECOMMENDATIONS

These recommendations, as contained throughout the text, are offered with a view to further enhance the conduct of elections in Malta and to support efforts to bring them fully in line with OSCE commitments and other international standards for democratic elections. These recommendations should be read in conjunction with past OSCE/ODIHR recommendations that remain to be addressed. The OSCE/ODIHR stands ready to assist the authorities of Malta to further improve the electoral process and to address the recommendations contained in this and previous reports.⁶⁴

A. PRIORITY RECOMMENDATIONS

1. The EC should consider a new ballot design where all parties and candidates are presented equally. Consideration should also be given to allowing all parties contesting the elections full and unimpeded access to all stages of the electoral process, including all facilities within the counting centre.
2. Criminal liability for defamation and insult should be repealed and replaced with reasonable civil sanctions that do not limit free speech or threaten the economic survival of media outlets.
3. Limitations on the right to stand for office could be reviewed to further enhance full compliance with OSCE commitments and other international obligations and standards.

⁶⁴ In paragraph 25 of the 1999 OSCE Istanbul Document, OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”.

4. To foster greater transparency and make the reporting system more effective, donations to parties and the entities they own should be subject to similar reporting and public disclosure requirements.
5. To enhance transparency and enable voters to make informed choices, authorities could consider introducing a requirement that all election-related campaign materials contain imprint data with information about the entity that ordered and paid for their production and display.
6. The electoral legal framework should be reviewed to address OSCE/ODIHR recommendations as well as to consolidate and harmonize the legislation and to address any ambiguities. Reform should be undertaken well in advance of the next elections and involve open consultation with all relevant stakeholders.
7. Consideration should be given to amending the legal framework to explicitly provide full access to the electoral process for international and citizen observers.

B. OTHER RECOMMENDATIONS

Election Administration

8. Consideration should be given to reviewing legal provisions for the appointment of individuals as both assistant commissioners and party agents to avoid any conflict of interest.

Voter Registration

9. Restrictions of voting rights for prisoners should be reviewed to ensure that any limitation is proportionate to the crime committed and clearly outlined in the law.
10. The legislation should be harmonized with the objectives of the CRPD, to ensure the full voting rights of persons with various types of mental disabilities.
11. The authorities could consider reviewing the voting card requirement to lower the election expenditure and eliminate the risk of disenfranchisement of voters not in possession of such cards on election day.

Candidate Registration

12. Consideration could be given to encouraging women's political participation through the introduction of temporary special measures.

Political Party and Campaign Finance

13. To enhance transparency and facilitate oversight, consideration could be given to a requirement that donations above a certain amount only be made through a designated bank account. Moreover, authorities could consider requiring parties to record all donations and lowering the disclosure threshold.

14. To assure equality among candidates and foster legal certainty, the ministerial power to change candidates' spending ceiling could be reconsidered. Consideration could be given to adjust the spending limit based on a form of indexation rather than an absolute amount.
15. To enhance transparency, parties' elections-related income and expenditure should be made public shortly after the elections. Consideration could also be given to introducing a disclosure requirement on income and expenditure before election day.
16. To improve the effectiveness of the sanctioning procedures, authorities could consider reviewing the legislation to allow anyone to initiate campaign finance violation proceedings without the necessary recourse to the Attorney General or the EC.

Media

17. To increase public trust and foster representation of wider political positions and societal interests, consideration could be given to revising the rules for the appointment of members of the broadcasting regulator and PBS management in a manner, which enhances independence.

Complaints and Appeals

18. To enhance the transparency and accountability of the system of electoral dispute resolution, records of complaints and EC decisions should be published. Consideration should also be given to setting specific deadlines for the adjudication and publication of election-related complaints and appeals by the EC and the courts.

Election Day, Voting, Counting and Tabulation of Results

19. Authorities should consider reforming provisions for assisted voting to ensure secrecy of the vote, in line with OSCE commitments and other international standards.
20. The EC should consider publishing detailed results of the elections disaggregated by municipality and polling stations to enhance transparency and voter confidence in the process.
21. Consideration could be given to eliminating the possibility for candidates to contest the elections in two districts and the holding of casual elections as this practice may distort competition and produce results that do not fully reflect the voters' will.

ANNEX: FINAL RESULTS

	<i>FIRST PREFERENCE</i>												TOTAL VALID BALLOTS	INVALID	INVALID BALLOTS CAST %	TOTAL BALLOTS CAST	REGISTERED VOTERS	TURNOUT %
	PL		PN		AD		MPM		AB		Independent							
	Votes	Seats	Votes	Seats	Votes	Seats	Votes	Seats	Votes	Seats	Votes	Seats						
District 1	13,844	3	10,094	2	147	-	80	-	27	-	4	-	24,196	256	1.1	24,452	26,598	91.9
District 2	17,353	4	6,761	1	174	-	78	-	0	-	0	-	24,366	269	1.1	24,635	26,396	93.3
District 3	16,328	4	6,775	1	152	-	73	-	0	-	35	-	23,363	284	1.2	23,647	25,404	93.1
District 4	16,383	4	7,528	1	171	-	114	-	0	-	0	-	24,196	292	1.2	24,488	26,095	93.8
District 5	15,259	3	7,720	2	156	-	80	-	0	-	0	-	23,215	361	1.6	23,576	25,295	93.2
District 6	13,717	3	9,164	2	94	-	85	-	16	-	0	-	23,076	246	1.1	23,322	24,884	93.7
District 7	14,042	3	10,509	2	218	-	81	-	29	-	0	-	24,879	397	1.6	25,276	27,106	93.2
District 8	10,83	2	12,591	3	267	-	117	-	0	-	0	-	23,805	277	1.2	24,082	25,982	92.7
District 9	9,712	2	13,007	3	297	-	65	-	36	-	0	-	23,117	282	1.2	23,399	25,636	91.3
District 10	8,873	2	14,058	3	273	-	74	-	41	-	0	-	23,319	266	1.1	23,585	26,46	89.1
District 11	10,282	2	13,207	3	290	-	101	-	30	-	0	-	23,91	288	1.2	24,198	26,244	92.2
District 12	11,12	2	11,921	3	199	-	97	-	42	-	11	-	23,39	389	1.7	23,779	27,076	87.8
District 13	13,233	3	12,361	2	126	-	72	-	0	-	41	-	25,833	424	1.6	26,257	28,68	91.6

Total	170,976	37	135,696	28*	2,564	-	1,117	-	221	-	91	-	310,665	4,031	1.3	314,696	341,856	92.1
%	55.04		43.68		0.83		0.37		0.07		0.03							

* Two additional seats (for a total of 30) were allocated to the PN in accordance with Article 52(1) of the Constitution.

Source: [Electoral Commission](#)

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 150 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it coordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights** and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All OSCE/ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (<http://www.osce.org/odihr>).